IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.190 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
KAMDAR ASSOCIATES - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR BD KARIA for MR RK PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 11/10/2005
ORAL ORDER
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following question under Section 256(1) of the Income-tax Act, 1961 (the Act), at the instance of the Commissioner

of Income-tax:

> "Whether, on the facts and in the circumstances of the case, the appellate Tribunal was right in holding that the assessee company which was engaged in ship breaking activity, is an industrial undertaking and hence deduction under Section 80HHA & 80I is allowable ?"

2. Mr.Karia, the learned advocate for the appellant, has very fairly invited attention to a decision of this Court rendered in case of Commissioner of Income-tax Vs. Vijay Ship Breaking Corporation, [2003] 261 ITR 113 (Guj.) to submit that the issue stands concluded against the respondent-assessee.

3. In the circumstances, it is not necessary to set out facts and contentions in details. For the reasons stated in judgment of this Court rendered in case of Commissioner of Income-tax Vs. Vijay Ship Breaking Corporation(supra), the question referred is answered in the negative i.e. in favour of the Revenue and against the assessee.

4. At this stage Mr.Karia orally prays for leave to

appeal to Supreme Court in terms of Section 261 of the Act. In light of the fact that by orders dated 22nd August, 2003 and 7th November, 2003 the Apex Court has already granted leave to appeal in matters involving identical issue leave is granted.

5. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**